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PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

HUMAN RIGHTS AND DISABILITY

Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1995/17

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Introduction

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1995/17 of 18 August 1995, requested the Secretary-General to report in 1996 to the Sub-Commission regarding coordination endeavours which affect persons with disabilities, with emphasis on activities of the other United Nations organizations and bodies that deal with alleged violations of the legal obligations of States under the International Bill of Human Rights and United Nations treaties that protect persons with disabilities.

2. The Sub-Commission further encouraged all the human rights treaty-monitoring bodies to respond positively to invitations from the Sub-Commission and the Commission on Human Rights to monitor the compliance of States with their commitments under the relevant human rights instruments in order to ensure the full enjoyment of those rights by persons with disabilities, and to respond in writing.

3. Pursuant to that resolution, the High Commissioner for Human Rights, by a communication dated 18 December 1995, invited the chairmen of all the human rights treaty-monitoring bodies, the directors-general of the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, the Director for Policy Coordination and Sustainable Development of the United Nations Secretariat and the Special Rapporteur of the Commission for Social Development on disability, to submit relevant information to the Centre for Human Rights by 1 May 1996.

4. By 31 May 1996, replies had been received from the Chairperson of the Committee on the Rights of the Child. The Chairpersons of the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights sent general comments adopted by those bodies concerning, respectively, disabled women and persons with disability. The United Nations Educational, Scientific and Cultural Organization also sent a reply. A reply was also received from the Special Rapporteur of the Commission for Social Development on disability. These replies are summarized below.

5. In addition, the Secretary-General would like to refer to paragraph 3 of resolution 1995/17 in which the Sub-Commission requested him, in continuing response to the concern of the General Assembly expressed in its resolution 48/99 of 20 December 1993 regarding the need to give higher priority and viability to disability issues, to help ensure wide distribution of the report of the Special Rapporteur, Mr. Leandro Despouy, entitled Human Rights and Disabled Persons (United Nations publication, Sales No. E.92.XIV.4), in which international mechanisms for the protection of persons with disabilities, such as a moderator or ombudsman, are proposed.

6. In compliance with that request, the above-mentioned report has been made available at sessions of the United Nations human rights organs and bodies and at pertinent international meetings and has been sent to organizations and individuals at their request.

I. INFORMATION RECEIVED FROM TREATY BODIES

A. Committee on the Rights of the Child

[6 February 1996]
[Original: English]

7. The Committee adopts a certain number of concluding observations and recommendations, at the outcome of its consideration of reports submitted to it by States parties, in order to ensure the implementation of the Convention on the Rights of the Child.

8. The Committee has examined the situation of disabled children in the light of article 23 of the Convention, especially focused on the rights of mentally and physically disabled children, with a view to ensuring their active participation in the community and respect for their dignity and the promotion of their self-reliance. The Committee is also taking into account the general principles of the Convention including article 2 (non-discrimination), article 3 (best interests of the child) and article 4.

9. A first matter of concern is that some societies are not sufficiently sensitive to the needs and situation of disabled children, in the light of article 2 of the Convention. The Committee is preoccupied by the widespread discriminatory attitudes towards those children. Strategies and educational programmes, along with the adequate dissemination of information, should be undertaken to avoid certain prejudices which affect disabled children negatively (see A/49/41, paras. 177 and 183).

10. The Committee recognizes the prevalence of certain negative attitudes which hamper the implementation of the rights of disabled children with regard to article 23, such as isolation from the rest of society. The promotion of their rights should be further advanced through, for instance, support to parents' organizations and to community-based services and a sustained programme for moving children from institutions to a good family environment (see A/49/41, para. 307).

11. The Committee is negatively impressed by the fact that some disabled children do not have adequate access to health and social care services and it expresses concern over the low number of disabled children enrolled in schools, which might reflect an insufficient attention to their specific needs. More protection should be offered them, including the possibility, through education, of integrating properly into society and participating actively in family life. Efforts for the early detection of the incidence of handicap should be made (see A/49/41, paras. 102 and 108).

12. Budgetary reductions have also affected disabled children who are particularly disadvantaged in their access to adequate health and educational facilities. The Committee urges countries to take all the necessary steps to minimize the negative impact of the structural adjustment policies on the situation of disabled children. The Committee recognizes, in the light of article 4, the priority of allocating the maximum extent of the available resources to protect these children (see A/49/41, para. 163).

13. International assistance and the exchange of appropriate information will also be needed to address more effectively the challenge of improving the situation of disabled children, in conformity with article 23, paragraph 4 of the Convention.

B. Committee on Economic, Social and Cultural Rights

14. General Comment No. 5 (1994) adopted by the Committee at its 38th meeting (eleventh session) on 25 November 1994, deals with issues relating to persons with disabilities. In particular, it points to the importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities. However, the Committee's experience indicates that States parties have devoted very little attention to this issue in their reports. This appears to be consistent with the Secretary-General's conclusion that "most Governments still lack decisive concerted measures that would effectively improve the situation" of persons with disabilities. 1/ It is therefore considered appropriate to review, and emphasize, some of the ways in which issues concerning persons with disabilities arise in connection with the obligations contained in the Covenant.

15. The General Comment states as follows:

> "5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights 'enunciated ... will be exercised without discrimination of any kind' based on certain specified grounds 'or other status' clearly applies to discrimination on the grounds of disability.
>
> "...
>
> "6. The absence of an explicit, disability-related provision in the Covenant can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically.
>
> "...

I. GENERAL OBLIGATIONS OF STATES PARTIES

"9. The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required. As the Committee has previously observed (General Comment No. 3 (Fifth session, 1990), para. 12), the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints.

"...

"11. Given the increasing commitment of Governments around the world to market-based policies, it is appropriate in that context to emphasize certain aspects of States parties' obligations. One is the need to ensure that not only the public sphere, but also the private sphere, are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities. In a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities should be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained. This is not to imply that legislative measures will always be the most effective means of seeking to eliminate discrimination within the private sphere. Thus, for example, the Standard Rules place particular emphasis on the need for States to 'take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution'. 2/

"12. In the absence of government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces. Similarly, while it is appropriate for Governments to rely on private

voluntary groups to assist persons with disabilities in various ways, such arrangements can never absolve Governments from their duty to ensure full compliance with their obligations under the Covenant.

II. MEANS OF IMPLEMENTATION

"13. The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1 (Third session, 1989)) ...

III. THE OBLIGATION TO ELIMINATE DISCRIMINATION ON THE GROUNDS OF DISABILITY

"15. Both de jure and de facto discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more 'subtle' forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, 'disability-based discrimination' may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.

"16. Despite some progress in terms of legislation over the past decade, the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.

"...

"18. Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective ..."

16. Chapter IV of the General Comment deals with specific provisions of the Covenant in order to ensure the full enjoyment of the relevant rights by persons with disabilities. 3/

C. Committee on the Elimination of Discrimination against Women

17. General Recommendation No. 18 (1991) adopted by the Committee at its tenth session 4/ deals with issues relating to disabled women. The General Recommendation states as follows:

"The Committee on the Elimination of Discrimination against Women,

Taking into consideration particularly article 3 of the Convention on the Elimination of All Forms of Discrimination against Women,

Having considered more than 60 periodic reports of States parties, and having recognized that they provide scarce information on disabled women,

Concerned about the situation of disabled women, who suffer from a double discrimination linked to their special living conditions,

Recalling paragraph 296 of the Nairobi Forward-looking Strategies for the Advancement of Women, in which disabled women are considered as a vulnerable group under the heading 'areas of special concern',

Affirming its support for the World Programme of Action concerning Disabled Persons (1982),

Recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

II. INFORMATION RECEIVED FROM THE SPECIAL RAPPORTEUR OF THE COMMISSION FOR SOCIAL DEVELOPMENT ON DISABILITY

[31 May 1996]
[Original: English]

18. In the view of the Special Rapporteur, the issue of coordinating disability programmes and initiatives is of fundamental importance for further progress in this field. He has raised this issue several times with representatives of the United Nations Secretariat, though so far without any concrete results. He considers that an efficient mechanism has to be established whereby policy and plans could be coordinated. He thinks the time is right for a high-level initiative in this respect. It concerns both the social development aspect and the human rights perspective in the disability field. He considers his job to be mainly in the social development area but

understands the need for initiatives and coordination in the human rights area, where so little has been done but where the potential for development is great.

19. The Special Rapporteur and his panel are now dealing with the interpretation of the results of their comprehensive questionnaire, to which 70 Governments and 150 Non-Governmental Organizations have replied. They also have two separate research projects in the essential fields of employment and education where they cooperate closely with ILO and UNESCO. On 20 June the Special Rapporteur was to participate in a meeting with representatives of ILO, UNESCO and WHO to start discussion on how efforts in the disability field could be more efficiently coordinated. At the same time, the Commission for Social Development is discussing its own mandate and mode of work. He hopes that this will lead to a higher level of activity and better coordination.

III. INFORMATION RECEIVED FROM THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[16 February 1996]
[Original: English]

20. UNESCO's work has bearing on the protection of the rights of disabled persons. Alleged violations of cultural rights are examined by the Committee on Conventions and Recommendations. These also cover the rights of persons with disability. UNESCO's activities for promoting human rights education also include education of disabled persons.

Notes

1/ A/47/415, para. 6.

2/ General Assembly resolution 48/96 of 20 December 1993, annex, rule 1.

3/ See A/49/40, paras. 19-38.

4/ See A/46/38.